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No. 01-1653

Supreme Court, U.S.
FILED
JUL 3 2002
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

IVY MASON, on her own behalf and on behalf of those similarly situated,

Petitioner,

v.

JOHN HAMILTON, in his official capacity as Secretary of the Indiana Family and Social Services Agency, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION

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QUESTION PRESENTED

The Social Security Act prohibits Social Security benefits from being "subject to execution, levy, attachment, garnishment, or other legal process." 42 U.S.C. § 407(a). Further, the Act provides for the appointment of representative payees for Social Security beneficiaries whom the Social Security Administration deems unable to manage their funds. 42 U.S.C. § 1383(a)(2); 20 C.F.R. § 404.2010. The Act generally prohibits creditors of Social Security beneficiaries from becoming representative payees for those beneficiaries. 42 U.S.C. § 405(j)(2)(C)(i)(III). However, unlike many other creditors of Social Security recipients (including other state agencies), licensed state care facilities who are creditors of their institutionalized patients *may* be appointed as representative payees of those patients. 42 U.S.C. § 405(j)(2)(C)(iii)(III).

The issue in this case is whether, in light of these and other provisions of the Social Security Act, a state psychiatric hospital that has been appointed as representative payee of an institutionalized patient falls within the statutory prohibition against subjecting benefits to "other legal process" when it uses the patient's Social Security benefits to pay for the patient's cost of care and maintenance.

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STATEMENT OF THE CASE

1. The Social Security Act provides that, where a beneficiary is unable to manage her own finances, the Social Security Administration ("SSA") may appoint a representative payee to receive and manage the funds for the beneficiary. 20 C.F.R. § 404.2010. Under federal regulations, preferred representative payees for adult Social Security beneficiaries include a "legal guardian or spouse or other relative; a friend who has custody of the recipient; *a public or nonprofit institution which has custody*; a private institution which has custody; and other persons who are able and willing to serve as a payee . . . ." 20 C.F.R. § 404.2021(a) (emphasis added).

Notably, while creditors generally cannot be named as representative payees for their debtors, there is an explicit exception to that rule for, among others, care facilities licensed or certified under State or local law. 42 U.S.C. § 405(j)(2)(C)(iii), Pet. App. 40a-41a. Thus, a state hospital can both be a representative payee of an institutionalized Social Security beneficiary and a creditor of that beneficiary. Pet. App. 8a.

2. The Social Security Act also includes an anti-attachment provision, which states that Social Security benefits shall not "be subject to execution, levy, attachment, garnishment, or other legal process . . . ." 42 U.S.C. § 407(a). In addition, federal regulations state that a "payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee." 20 C.F.R. § 404.2040(d). A payee, however, may satisfy such a debt of the beneficiary "if the current and reasonably foreseeable needs of the beneficiary are met." *Id.*

3. The State of Indiana operates six mental health hospitals and two developmental disability centers. Pet. App. 15a. While individuals who are legally admitted to those institutions are liable for the cost of their care at the hospital (Ind. Code § 12-24-13-1 *et seq.*), they are entitled to care and maintenance at the institution regardless of ability to pay. Ind. Code § 12-24-5-3; Pet. App. 16a.

The SSA sometimes appoints Indiana state hospitals to be representative payees for institutionalized Social Security beneficiaries. Pet. App. 17a. When the SSA makes such an appointment, it notifies the beneficiary that a payee has been appointed and informs the beneficiary of the right to appeal the appointment. *Id.* If a beneficiary objects to the appointment of a representative payee, the SSA may reconsider its initial determination to appoint a payee. 20 C.F.R. §§ 404.907; 416.1407.

4. Once a state hospital is appointed as representative payee, it is required to follow the SSA's regulations for applying Social Security payments to pay for the beneficiary's current care and maintenance. 20 C.F.R. §§ 404.2035; 404.2040. Representative payees are required to use Social Security payments for the "use and benefit" of the beneficiary "in a manner and for the purposes [the payee] determines, under the guidelines in this subpart, to be in the best interests of the beneficiary." 20 C.F.R. § 404.2035(b). More specifically, the regulations provide that the payee may use the Social Security funds to pay for current maintenance, which in the case of an institutionalized person "includes the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution." 20 C.F.R. § 404.2040(b).

In order to ensure compliance with these requirements, the Social Security Act requires that, when a representative payee is a state institution, SSA must "establish a system of accountability monitoring for institutions in each State." 42 U.S.C. §§ 405(j)(3)(B), Pet. App. 45a; 1383(a)(2)(C)(ii). Further, if the SSA believes that a representative payee is misusing Social Security payments, it "may require a report at any time from any person receiving payments on behalf of another . . . ." 42 U.S.C. §§ 405(j)(3)(D), Pet. App. 45a; 1383(a)(2)(C)(iv). If a representative payee misuses a recipient's benefits, SSA must "promptly revoke certification for payment of benefits to such representative payee . . . and certify payment to an alternative representative payee." 42 U.S.C. §§ 405(j)(1)(A), Pet. App. 37a; 1383(a)(2)(A)(iii). A representative payee who knowingly misuses benefits commits a felony. 42 U.S.C. § 408(a)(5).

When they act as representative payees, Indiana state hospitals place the recipient's Social Security benefits into a trust account. Pet. App. 17a. Before placing the money into the trust account, the hospitals notify the recipients "that they are liable for the cost of their care in the hospital and verbally inform them that their Social Security benefits may be used to pay for that cost." Pet. App. 17a, n.3. The state hospitals pay spending money to the recipients from the trust account, and "at least a portion of the remainder is applied to institutional maintenance costs." Pet. App. 17a. Because the state hospitals are the payees, funds used for care and maintenance of the recipients "are simply deducted from their trust account to pay for such costs." Pet. App. 18a.

In order to be sure that they comply with federal regulations, however, state hospitals apply Social Security benefits under directions from SSA representatives. Defendant's Statement of Additional Material Facts, ¶¶ 16-20; 54-56 (Docket 38). The directions provided by SSA include specific requirements for setting aside spending

money, clothing and special needs money, and gift money for the recipients. *See id.* ¶ 18. Also, SSA demands receipts from state hospitals to account for all money spent on behalf of recipients. *Id.* ¶¶ 18, 54. Thus, state hospitals apply Social Security benefits to their patients' costs of care only after SSA representatives determine, consistent with federal regulations and the SSA Program Operating Manual System, how the representative payee should apply and invest the benefits.

5. Petitioner Ivy Mason is a mentally disabled Social Security beneficiary who, periodically, has been involuntarily committed to Richmond State Hospital ("RSH"), an Indiana psychiatric hospital. Pet. App. 18a. In 1998, Mason was awarded Social Security survivor's benefits retroactive to 1989. Pet. App. 19a. Mason's lump-sum retroactive benefits totaled $34,408.73. *Id.*

Because Mason is unable to manage her funds, SSA advised Mason that it would appoint RSH as representative payee to manage Mason's Social Security benefits. Pet. App. 19a. Pursuant to federal regulations, SSA notified Mason that RSH had been appointed as representative payee. Pet. App. 19a; *see* 20 C.F.R. § 404.2030 (requiring notice to beneficiaries of appointment of representative payee). Mason did not contact SSA to object to the appointment of RSH as representative payee, and indeed signed the SSA notification on December 20, 1999. Pet. App. 19a. SSA may yet designate a different representative payee if it learns that "the interests of the beneficiary are not served by continuing payment to the present payee . . . ." 20 C.F.R. § 404.2050.

Consistent with federal regulations and SSA directions, RSH, as representative payee for Mason, has applied some of Mason's Social Security benefits to pay for the cost of care and maintenance it provides to Mason. While the cost of

Mason's care at RSH amounts to approximately $7,170.00 monthly, RSH deducts only a percentage of that rate—about $518—from her account for current maintenance charges. Pet. App. 19a-20a, n. 4. RSH also applied a portion of Mason's lump-sum retroactive benefits to her outstanding bill for care at RSH. Pet. App. 19a. As of May 31, 2000, Mason's bill for care at RSH was $412,070.98. Pet. App. 5a.

REASONS FOR DENYING THE PETITION

I. There Is No Conflict In Need Of Resolution Because The Exception Allowing State Care Facilities Who Are Creditors To Be Representative Payees Distinguishes This Case From *Keffeler*

The Court recently granted certiorari in *Guardianship Estate of Keffeler v. State of Washington*, 32 P.3d 267 (Wash. 2001), *cert. granted*, 122 S.Ct. 2228 (May 28, 2002) (No. 01-1420), where the Washington State Supreme Court ruled that, in light of the anti-attachment provision of the Social Security Act (42 U.S.C.§ 407(a)), a state may not use foster children's Social Security benefits to pay for current costs of care even where the state is representative payee. Notwithstanding the need for review in *Keffeler* and the importance of the issues in that case in their own right, and notwithstanding any superficial similarities with this case, *Keffeler* is distinguishable because the representative payee, the Washington Department of Social and Health Services (DSHS), was not exempted from the prohibition against being both a creditor and a representative payee.

In *Keffeler*, the Washington Supreme Court was particularly troubled that, notwithstanding the general rule against a creditor's becoming a representative payee, the DSHS "performs the role of creditor when it takes the foster child's SSA entitlement to reimburse itself for moneys spent

on the child." *Keffeler*, 32 P.3d at 277. In such a circumstance, *Keffeler* ruled, an unexempted representative payee who behaves like a creditor falls within the ambit of prohibited "legal process" when it applies the recipient's benefits to the recipient's cost of care. *Keffeler*, 32 P.2d at 277-78.

Here, however, Indiana state hospitals are exempted by the Social Security Act from the prohibition against being both creditor and representative payee. *See* 42 U.S.C. § 405(j)(2)(C)(iii)(III), Pet. App. 41a. This exception for state institutions—which again was not in play in *Keffeler*—was critical for the Seventh Circuit, which observed that the exception signifies two important points concerning the inapplicability of the anti-attachment provision:

> [F]irst that Congress did not intend money management by representative payees who are also creditors to be included in the anti-attachment provision (otherwise the separate prohibition would be redundant), and second that it considered the balance of interests and decided—without noting special restrictions—that, despite the need to protect recipients' benefits from creditors, state institutions should be allowed to act as representative payees.

Pet. App. 8a.

The court also concluded that by permitting state facilities who are creditors also to be representative payees, Congress intended to permit use of patients' benefits for their costs of care at those state institutions:

> Congress and the Social Security Administration saw fit to allow state hospitals to act as representative payees when certain safeguards were met: the payee must use the money for the use and benefit of the

> recipient, which may include paying for the cost of current care and maintenance, 20 C.F.R. §404.2035, and the SSA must provide notice to the recipient that it intends to name a representative payee, who that payee will be, and that the recipient has the right to object to and appeal the decision.

Pet. App. 9a. The Seventh Circuit also concluded that the SSA had intended for state institutions to use the money in the manner that it had been used by the Indiana hospital. *See* Pet. App. 9a-10a. As the Seventh Circuit recognized, "[t]he Social Security Act and regulations . . . permit—in fact, encourage—state institutions to act as representative payees and, more pertinently, when acting as payees, to apply recipients' benefits to the cost of their care and maintenance at state institutions where they reside." Pet. App. 7a (citing 20 C.F.R. § 404.2021; § 404.2035; § 404.2040).

Put another way, because state hospitals who are creditors may also be representative payees, they may apply benefits to costs without resorting to legal process. The Washington Supreme Court in *Keffeler*, after all, essentially concluded that when an ordinary representative payee acted like a creditor and applied Social Security benefits to costs of care provided by the payee, it was, constructively, engaged in some sort of "other legal process" because that is the only means an ordinary creditor could use (but for the anti-attachment prohibition) to attach Social Security benefits. *See Keffeler*, 32 P.3d at 277-78. But the *Keffeler* analysis, right or wrong, simply would not apply where the payee is statutorily permitted also to be a creditor. Thus, the anti-attachment provision (which prohibits the use of legal process to attach social security benefits) does not apply, even under the rationale of *Keffeler*.

Keffeler is also distinguishable because Indiana, unlike Washington, has no special statutory structure to capture the

Social Security benefits of individuals in the state's care. State hospitals such as RSH use patients' benefits to cover the costs of care only by virtue of federal statutes, regulations and directives. In *Keffeler*, by contrast, Washington established a statutory structure to reimburse itself for the cost of care of children in foster care with money that came into the state's possession while the children were in the state's custody. *See Keffeler*, 32 P.3d at 269-70 (citing RCW 74.13.060). That statutory structure specifically included Social Security income among the sources of money that the state could use to reimburse itself. *Id.* Thus, if the state was representative payee, Social Security money would come into the state's possession, and this money would be used to reimburse the state for the cost of foster care.[1]

Unlike *Keffeler*, the Indiana state hospitals have simply acted as representative payees pursuant to the Congressional exception for licensed state facilities. The SSA has instructed the state's hospitals, including RSH, how to allocate the benefits of patients for whom the hospitals act as representative payee. Defendant's Statement of Additional Material Facts, ¶¶ 16- 20; 54-56 (Docket 38). The SSA, in turn, provides this instruction based on the express language of the applicable federal statutes and regulations, including the anti-attachment provisions.

This difference in how Washington and Indiana approach their roles as representative payees is significant. In *Keffeler*, the state statutory scheme designed to capture

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[1] Indeed, evidence was presented at the trial court in *Keffeler* that the state would probably not even have applied to be a representative payee if it could not have relied on the child's Social Security benefits to reimburse the cost of foster care. *Keffeler*, 32 P.3d at 274.

Social Security benefits was preempted by federal law. *Keffeler*, 32 P.3d at 275 ("DSHS's cost recovery policy runs afoul of a federal statute which preempts state law under the Supremacy Clause of the United States Constitution."). Indeed, *Keffeler* referred to the Washington program as one of "self-prioritization." *Id.* Here, by contrast, Indiana state hospitals acting as payees apply benefits to costs of care only by virtue of federal law and the SSA's instructions to Indiana state hospitals based on that law. Quite simply, Indiana State hospitals do not "self-prioritize" when it comes to applying Social Security benefits; they follow SSA's instructions. Consequently, there is no state law to be preempted. Thus, unlike *Keffeler*, the issue in this case really has to do with understanding how different provisions of federal Social Security law fit together, not with whether state laws designed to capture Social Security benefits are preempted.

Whatever the merits of the Washington Supreme Court's decision in *Keffeler*, that case did not address the actions of state hospitals that may be both creditors and representative payees. Therefore, the decision below is not in conflict with *Keffeler*.

II. The Decision Below Is Correct And Does Not Conflict With *Bennett* And *Philpott* Because Those Cases Did Not Consider The Actions Of Representative Payees

Like *Keffeler*, both *Bennett v. Arkansas*, 485 U.S. 395 (1988), and *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), are distinguishable from this case. Neither *Bennett* nor *Philpott* involved a situation where a state had been appointed as representative payee to manage a recipient's benefits. The decision below is therefore not in conflict with those cases.

In *Bennett*, an Arkansas statute authorized the state to seize a prisoner's property, including Social Security income, and apply it to the cost of the prisoner's incarceration. *Bennett*, 485 U.S. at 1204-05. The Court held that the Arkansas statute was inconsistent with 42 U.S.C. § 407 and was therefore preempted. *Id.* at 1205. But in *Bennett* there was no question concerning the actions of the state as a duly appointed representative payee. This case, by contrast, concerns only those situations where a state hospital acts as representative payee, and has all the obligations associated with that status, including the obligation to use a recipient's benefits for the cost of institutional care.

Further, no Indiana law directs the state to take a patient's property, including her Social Security income. The practice whereby state hospitals apply a portion of a patient's Social Security benefits to the cost of patient care and maintenance simply results from the appointment of the state institution as payee and implementation of the instructions provided by the Social Security Administration. Pet App. 17a-18a. In short, as the Seventh Circuit essentially recognized, the actions of a state as representative payee are judged by a different set of guidelines than the actions of state that simply wishes to seize property. *See* Pet. App. 7a-9a. Far from being preempted by federal law, the procedure implement by Indiana State hospitals complies with express federal regulations, as noted above. *See* 20 C.F.R. §§ 404.2021; 404.2035; 404.2040.

In *Philpott*, a New Jersey public welfare agency advanced monthly disability assistance to a beneficiary who was required to sign an agreement to reimburse the agency with his Social Security benefits. *Philpott*, 409 U.S. at 414. New Jersey state law both required the execution of the reimbursement agreement as a condition of the receipt of the disability assistance and provided that that filing a notice of reimbursement agreement in court had the same force and

effect as a judgment. *Id.* at 414, 415. The Court ruled that 42 U.S.C. § 407 prohibited the state of New Jersey from taking money in this manner. *Id.* at 415-16. As in *Bennett*, there was no issue relating to the state's actions as representative payee. Here, state hospitals do not require patients to execute reimbursement agreements as a condition of receiving care, nor does Indiana law require entry of judgments where representative payee state hospitals apply Social Security benefits for their patients' costs of care. Again, Indiana is merely following federal law and the instructions of the Social Security Administration when it applies a patient's Social Security benefits to the cost of her care and maintenance at an institution.

Here, in short, state hospitals, including the RSH, act as representative payees, and that makes all the difference. Representative payees are obligated to use the Social Security benefits to pay for things that benefit the recipients, including the cost of institutionalized care. 20 C.F.R. § 404.2040(b). Because of that obligation, representative payees need not resort to seizure, legal process or reimbursement agreements to allocate benefits to cover the cost of care. And far from undertaking some unilateral process to attach benefits, Indiana state hospitals merely follow the dictates of federal law and the SSA when they apply benefits for the costs of the care they provide to recipients. The Seventh Circuit was therefore correct in upholding the actions of Indiana state hospitals as representative payees.

Finally, though Petitioners do not claim that the decision below conflicts with *Crawford v. Gould*, 56 F.3d 1162 (9th Cir. 1995) or *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir. 1989), Petitioners cite those cases as representing favorable applications of the principles established in *Bennett* and *Philpott*. Pet. 12-13. However, as with *Bennett* and *Philpott*, the state in *Brinkman* was not the representative payee for

the recipients (*Brinkman*, 878 F.2d at 264), so that case did not build on *Bennett* or *Philpott* in any relevant way. Further, as Petitioners acknowledge, *Crawford* did not expressly analyze the authority of the state to apply benefits to recipients' costs of care in its role as representative payee. *Crawford* merely analyzed whether a particular system for obtaining consent from recipients to apply their Social Security benefits to their costs of care amounted to "other legal process." *Crawford*, 56 F.3d at 1166-67. That issue is not presented here. And in any event, *Crawford* did not involve a state care facility that was entitled to act both as a creditor and as a representative payee, so *Crawford* also does not expand the reach of *Bennett* and *Philpott*. In these circumstances, there is no basis for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: July 3, 2002